S.B.Civil Second Appeal No.291/2005

Davendra Kumar and anr. vs. Smt. Saroj

Date : 24.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Parikshit Nayak, for the appellants.

Mr. NK Rastogi, for the respondent.

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Heard learned counsel for the parties.

The appellants are aggrieved by the judgment and decree passed by the trial court dated 23.3.2004 by which the suit for redemption of mortgage property was decreed and the appellants are further aggrieved by the judgment and decree of the first appellate court dated 2.5.2005 by which the appeal of the appellants was dismissed.

According to learned counsel for the appellants, the defendant Chagan Lal died but all the legal representatives of deceased Chagan Lal were not taken on record and, therefore, the decree is illegal.

It is clear that even before the trial court, the defendant Chagan Lal's legal representatives i.e. his two sons were taken on record and thereafter, the suit decreed. It is not the case of the appellant that the other representatives of deceased Chagan Lal were not impleaded party to do any fraud on the defendants or there was

collusion between the plaintiff and other legal representatives of Chagan Lal. Not only this, but the appellants were given full opportunity to contest the suit. They raised this objection which is not valid objection in view of the fact that the estate of Chagan Lal was fully represented.

In view of the above, I do not find any merit in this appeal. No substantial question is involved in this appeal.

Accordingly, this second appeal is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya